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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
APPEAL FROM ORDER NO.991 OF 2004@@
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IN
NOTICE OF MOTION NO.5233 OF 1999
IN
L.C. SUIT NO.6465 OF 1999 @@
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Arshad Wahadna ... Appellant

V/s.

The Municipal Corporation of
Greater Bombay ... Respondent

Mr.K.P. Tiwari for Appellant
Mr.J.Xavier for Respondent

CORAM: SMT.NISHITA MHATRE, J.@@
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DATED: NOVEMBER 29, 2004 @@
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P.C.:@@
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. The Appeal from Order has been filed against the dismissal of the Notice of Motion. A notice was issued in 1999 by the Mumbai Municipal Corporation to one Altaf Wahadna who claims to be the brother of appellant, showing that he had illegally constructed the mezzanine floor and had also lowered the plinth by 0.75 metres from the existing plinth level of the building in Office No.1, Khatav Building, Fort, Mumbai. Several contentions have been raised by the appellant before me, including that the landlord was not given a notice in respect of the alleged illegal construction as required by several judgments of this Court and that the notice is not specific as admittedly the premises had a loft.

2. All these contentions need not be considered by me at this stage. The contention of the appellant that no notice was issued to the landlord, contrary to the decisions of this Court will be a factor which will

exist even when the suit is heard. Any infirmity arising from not issuing the notice to the landlord would continue till the suit is heard. In my view, it would be appropriate to direct the Assistant Municipal Commissioner to rehear the matter after giving notice to the landlord as well.

3. The Assistant Municipal Commissioner shall issue notice to the appellant and the landlord of the building within four weeks from today calling upon them to make their representations with regard to the notice issued on 16.8.1999 under section 351 of the Act. The appellant and the landlord may make their respective representations within two weeks thereafter and file whatever documentary evidence that is required to establish that the offending structure was in existence prior to the datumline. The Assistant Municipal Commissioner will decide the representations and convey the decision to both the parties within four weeks thereafter.

4. The Mumbai Municipal Corporation will not take any action pursuant to the order of the Assistant Municipal Commissioner for a period of two weeks therefrom.

5. Appeal from Order is disposed of in the above terms.

6. In view of the disposal of the Appeal from Order, Civil Application No.1373 of 2004 does not survive and the same is disposed of accordingly.

7. Office to issue authenticated copy of this order.